

STATE OF MICHIGAN
COURT OF APPEALS

In re BYERS, Minors.

UNPUBLISHED

April 14, 2016

No. 328858

St. Clair Circuit Court

Family Division

LC No. 13-000137-NA

Before: O'CONNELL, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

Respondent-mother, K. Downs, appeals as of right the trial court's order terminating her parental rights to her two minor sons under MCL 712.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). We affirm.

I. BACKGROUND FACTS

Downs's sons and daughter were placed in a guardianship with their grandparents in January 2013 because Downs was unable to provide them with a safe, stable environment. Downs failed to comply with the terms of guardianship and, in July 2013, the trial court assumed jurisdiction over the children. Downs admitted that she had a history of substance abuse and domestic violence and agreed in pertinent part to complete parenting classes, substance abuse screening and counseling, and domestic violence counseling.

Downs initially did well with her service plan, and the trial court returned the children to her care in June 2014. However, in October 2014, Downs engaged in domestic violence with the father of her daughter. Downs's oldest son witnessed the domestic violence and believed that he should have acted to protect Downs from the violence.

After the trial court returned the children to foster care, Downs failed to comply with her visitation schedule. She rescheduled visits and frequently arrived late. In February and March of 2015, Downs began testing positive for methamphetamine. The trial court suspended Downs's visitation and, in May 2015, the Department of Health and Human Services (DHHS) petitioned to terminate Downs's rights to all three of her children.

At the hearing, Melissa Brandimore, the children's foster care worker, testified that Downs stated she still wished to have a relationship with her daughter's father despite their history of domestic violence. Downs had received domestic violence services but continued to

engage in domestic violence with him in October 2014, in front of her children. Brenda Thornton, Downs's substance abuse group leader, stated in a letter that Downs participated in substance abuse services. However, Brandimore testified that Downs inconsistently participated in drug screens, inconsistently attended substance abuse counseling, and relapsed. Downs's former mother-in-law testified that Downs had a tendency to become clean for a while and then relapse.

Regarding the children's best interests, the older son had post-traumatic stress disorder (PTSD) and displayed anger, irritability, intrusive recurrences of traumatic past events, and depressive thoughts. He also felt guilty and blamed himself for the domestic violence in October 2014. The younger son also had PTSD, generalized anxiety disorder, and a history of psychiatric hospitalizations. His counselor indicated that the source of his trauma was exposure to violence and drug dealings while around Downs. The children's therapists testified that both children required stability and were both concerned that Downs would not be able to maintain the level of stability the sons required.

Following the hearing, the trial court terminated Downs's rights to her sons. However, it found that it was not in the daughter's best interests to terminate Downs's parental rights because the daughter was in a more stable environment.

II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Id.* We also review for clear error the trial court's determination regarding the children's best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Contrary to Downs's assertion on appeal, the parent does *not* have the burden to show that termination is against the child's best interests. *Id.* at 365.

III. STATUTORY GROUNDS

Downs contends that the trial court erred when it found that statutory grounds MCL 712A.19b(3)(c)(i), (g), and (j) supported terminating her parental rights by clear and convincing evidence. We disagree.

The Department has the burden to prove the existence of a statutory ground by clear and convincing evidence. MCL 712A.19b(3); *Mason*, 486 Mich at 166. Clear and convincing evidence is "evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted, alteration in original).

MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent's rights if there is clear and convincing evidence that:

[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

This statutory ground exists when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services. See *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009). Children should not be forced to wait for long periods in foster care for “the mere possibility of a radical change in [the parent's] life.” *Id.* at 273.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The trial court may consider a parent's tendency to engage in relationships that expose the children to danger. *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court may properly consider the parent's substance abuse when determining whether it is reasonably likely that the child will be harmed if returned to the parent's home. See *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001). The trial court may also consider the potential psychological harm to the child caused by the parent's conduct or capacity. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). When a child has special needs, a parent's failure to “undertake the special efforts that those special needs demand[.]” may support terminating the parent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). *In re LaFrance Minors*, 306 Mich App 713, 728; 858 NW2d 143 (2014).

In this case, the trial court based its termination under these statutory grounds on Downs's continued substance abuse and propensity to engage in domestically violent relationships. The children began a guardianship in January 2013 and were first removed from Downs's care in July 2013. Brandimore testified that in the two-year pendency of this case, Downs inconsistently engaged in substance abuse services. It is undisputed that Downs relapsed in February and March of 2015. This demonstrated that Downs had not made sufficient progress on her service plan to keep the children safe. Downs's continued substance abuse, standing alone, would support terminating her parental rights.

However, Downs also continued to engage in a relationship that exposed the children to violence. Brandimore testified that Downs informed her that she continued to desire a romantic relationship with the daughter's father, even though the relationship was violent. Despite domestic violence counseling, Downs lacked insight into that situation. In October 2015, Downs

engaged in domestic violence with her children present. Witnesses testified that this created a particularly dangerous situation because the older son blamed himself for the domestic violence and for failing to keep Downs safe. The children's counselors also testified that domestic violence both caused and triggered the sons' PTSD. This not only demonstrated that Downs had not benefitted from domestic violence services, but also placed the children at a direct risk of physical and emotional harm.

We are not definitely and firmly convinced that the trial court made a mistake when it terminated Downs's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

IV. BEST INTERESTS

Downs contends that the trial court clearly erred by finding that terminating her parental rights was in her sons' best interests. We disagree.

The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

In this case, the trial court found that Downs and the children loved each other, shared a bond, and that Downs had good parenting abilities. However, it concluded that the children's serious need for stability outweighed those positive factors. The sons' counselors testified that a stable environment was crucial to their special emotional needs. When faced with instability, the children exhibited aggression and concerning emotional outbursts. The counselors testified that, based on Downs's history, she was unlikely to be able to provide them with the stable environment they desperately required. Additionally, Downs had not made progress on her service plan and inconsistently attended parenting time. The trial court did not need to speculate regarding the stability of a foster home to conclude that Downs's home was neither stable nor likely to become stable. We are not definitely and firmly convinced that the trial court made a mistake when it found that terminating Downs's parental rights was in the sons' best interests.

We affirm.

/s/ Peter D. O'Connell

/s/ Jane E. Markey

/s/ Colleen A. O'Brien